



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 19, 2019

CASE NUMBER: 2019OPA-0015

Allegations of Misconduct & Director's Findings

Named Employee #1

| Allegation(s): | | Director's Findings |
|----------------|---|-----------------------------------|
| # 1 | 8.200 - Using Force 1. Use of Force: When Authorized | Not Sustained (Lawful and Proper) |
| # 2 | 8.200 - Using Force 4. Use of Deadly Force | Not Sustained (Management Action) |
| # 3 | 8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force | Not Sustained (Lawful and Proper) |

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

SPD officers initiated a traffic stop of a vehicle on New Year's Eve 2018. The driver of the car – referred to here as the Subject – exited the car and ran from the officers across Aurora Avenue. Six officers pursued the Subject on foot and caught up to him at the southwest corner of 96th Street and Aurora Avenue. The Subject and the officers went down to the ground and, while the Subject was on his hands and knees, Body Worn Video (BWV) indicated that he was in possession of a firearm. The officers gave him numerous commands, including orders to "stop reaching" for the firearm. Named Employee #1 (NE#1) then fired one shot that killed the Subject. At the moment of the shooting, audio of the BWV captured the Subject saying, "nope, not reaching." This sentence was cut off when the shot was fired virtually simultaneously. It is unclear whether any of the officers actually heard this statement. OPA initiated this case and classified three policies for investigation. With regard to de-escalation, OPA classified this allegation to determine whether it was safe and feasible for NE#1 to use any of the options set forth in that policy prior to pursuing the subject and using force and whether there was any reasonable alternative available to NE#1 other than using force that would not have compromised legitimate law enforcement priorities. With regard to the policies concerning force and deadly force, OPA classified these allegations to determine whether the force used by NE#1, including the ultimate application of deadly force, was reasonable, necessary, and proportional based on the facts and circumstances available to him at the time.

ADMINISTRATIVE NOTE:

During its investigation, the Force Investigation Team (FIT) identified that there may not have been a sufficient legal basis for NE#1 to request the identification of the passenger in the Subject's car during the traffic stop. During a review of the BWV, OPA could not discern why NE#1 asked for the passenger's identification. While it was possible that she was not wearing a seatbelt at the time of their interaction (see NE#1's BWV, at 2:50), it is unclear whether this was the case at the inception of the stop. If so, it would have been permissible to ask for her identification. If not, that request would have been contrary to law. Ultimately, OPA returned this issue back to NE#1's chain of command to be handled as a Supervisor Action. As such, that issue was not subject to a full investigation and is not discussed herein.



SUMMARY OF INVESTIGATION:

A. Traffic Stop of the Subject's Vehicle

On the evening of December 31, 2018, NE#1 and Witness Officer #1 (WO#1) were on patrol together. The officers observed a grey Hyundai Elantra traveling in front of them. NE#1, who was the passenger in the patrol vehicle, ran the car's license plate through the Mobile Data Terminal (MDT). This search revealed that the driver's license for the registered owner of the car, a woman, was suspended/revoked in the third degree. After running the car's license plate, the officers reported observing the car make an illegal lane change. Specifically, the car moved right from the left lane, across traffic, and into the parking lot of a convenience store. The officers activated their patrol vehicle's emergency lights and siren and pulled into the parking lot to the right rear of the car. The car's lane change and the inception of the traffic stop were not recorded on the In-Car Video (ICV) for the officers' patrol vehicle due to a documented system failure. However, they were captured on video obtained from a nearby business. That video confirmed the illegal lane change and showed the officers activating their patrol vehicle's emergency equipment as they pulled behind the car.

NE#1 and WO#1 exited their patrol vehicle and approached the car. NE#1 walked towards the passenger's side while WO#1 contacted the driver. As WO#1 approached the driver, who is the Subject in this case, WO#1's BWV indicated that the Subject was partially outside of the vehicle. Specifically, while he was still sitting in the driver's seat, at least one of the Subject's legs was outside of the car. WO#1 directed the Subject to: "Stay in the car, please." The Subject responded: "What's going on?" At that point, NE#1 remarked to WO#1 that the driver was not the female to whom the car was registered. WO#1 walked closer to the car and the Subject stated that he was taking his female passenger to work. BWV indicated that, at this point, both of the Subject's legs were outside of the car. WO#1 asked the Subject to get back into the car and he complied. WO#1 told the Subject that they originally stopped the vehicle because of the owner having a revoked/suspended license, but that they also observed an illegal lane change. WO#1 asked the passenger if she was the registered owner, and both the Subject and the passenger said that she was not. The Subject said that the registered owner was his stepmother. The Subject also explained that he was taking the passenger to her place of employment when they made the turn into the convenience store. WO#1 told the Subject that, even though he was not the registered owner, the illegal lane change was still going to be addressed.

WO#1 asked the Subject for a driver's license and he said that he did not have one. WO#1 also asked the Subject for identification or a card with his name on it, but the Subject said that he was not in possession of any such documentation. The Subject started to look through the car and WO#1 told him: "No, no, no, don't be reaching for that." Immediately thereafter, WO#1 asked the Subject to turn off the car and to give him the keys. The Subject did so. WO#1 placed the keys on the top of the car. The Subject again asked WO#1 what was going on. WO#1 went over the radio and asked for a backing unit to come to the scene. WO#1 turned back to the Subject and requested his name. The Subject responded by giving his correct last name but provided a first name that belonged to another family member. WO#1 did not know this at the time. They went over the spelling of the first and last name several times. WO#1 asked the Subject whether he had ever been arrested before. The Subject said that he had been arrested a long time ago and referenced the Drug Offender Sentencing Act (DOSa). WO#1 asked the Subject whether he had ever been booked into the King County Jail and the Subject said that he had, again a long time ago. WO#1 asked the Subject for his middle initial, date of birth, and the last four digits of his social security number. The Subject provided accurate information responsive to these requests except for his date of birth, where he gave the correct date and month but an incorrect year (1978). WO#1 then walked back to his patrol vehicle.



While WO#1 spoke with the Subject, NE#1 was on the other side of the car interacting with the passenger. He initially asked the passenger for her identification. She did not have identification on her. At that point, NE#1, like WO#1, asked the Subject to turn the car off and take the keys out. He also went over the radio and asked for a backing unit. After the Subject turned off the car and gave the keys to WO#1, NE#1 asked the passenger for her name and wrote that information down on a notepad. NE#1 also returned to the patrol vehicle.

When they were sitting inside, WO#1 asked NE#1 if he saw the Subject reach for the gear shifter three times. NE#1 said that he did. WO#1 remarked that the Subject was a “big guy.” WO#1 read the Subject’s identifying information to NE#1 and NE#1 began entering it into the patrol vehicle’s MDT system. At that time, two other patrol vehicles responded to the scene. In the first patrol vehicle were Witness Officer #2 (WO#2) and Witness Officer #3 (WO#3). In the second patrol vehicle were Witness Officer #4 (WO#4) and Witness Officer #5 (WO#5). These backing officers exited their patrol vehicles and approached NE#1 and WO#1. NE#1 and WO#1 told WO#2 that the Subject had reached for the gear shifter three times. WO#2 opined that this suggested that the Subject may have an open warrant.

B. Foot Pursuit, Physical Struggle, and Shot Fired

Less than 30 seconds after the backing officers arrived at the scene, WO#1 yelled at the Subject while getting out of his patrol vehicle: “Hey, stay in the car! Stay in the car!” The Subject fled from the car and ran across Aurora Avenue. WO#1 then began pursuing the Subject. The other officers, including NE#1, also gave chase. During the brief foot pursuit, WO#1 yelled: “Stop reaching for your waistband, you’re going to get shot!” NE#1 caught up to the Subject first in the vicinity of the southwest corner of 96th Street and Aurora Avenue. NE#1 tackled the Subject from behind onto an area next to the sidewalk. The other officers converged on NE#1 and the Subject. They collectively struggled with the Subject, who was on the ground but rose to his hands and knees. Approximately 14 seconds elapsed from when the Subject fled until he was tackled down to the ground.

While on the ground, multiple officers, including NE#1, struggled with the Subject. NE#1 yelled: “You’re going to get fucking shot, dude!” (NE#1’s BWV, at 05:45.) WO#3 was situated by the front of the Subject. WO#3’s BWV showed that there was a handgun on the ground and that the Subject was gripping it by the top of the handgun’s barrel with his right hand (WO#3’s BWV, at 01:38). WO#2 grabbed onto the Subject’s left arm and yelled: “Gun, gun, gun!” (WO#2’s BWV, at 2:04.) Several other officers referenced the handgun and stated that the Subject was actively reaching for it. WO#1 warned: “He’s reaching! He’s reaching!” (WO#1’s BWV, at 05:22.) WO#3 stated: “He’s reaching for it!” (WO#3’s BWV, at 01:51.) During this time, the Subject continued to struggle against the officers. At times, the Subject’s hands appeared to be moving and grabbing at something. At one point during the struggle, WO#1 struck the Subject at least once in the back; however, this did not cause the Subject to cease his physical resistance or to immediately comply. At another point, WO#4, who was behind the Subject, announced “Taser, Taser.” However, WO#4 did not ultimately deploy the Taser. Both NE#1 and WO#3 had their handguns out and, at different moments, had their firearms pointed directly at the Subject’s head in a brace contact position (the gun pressed directly against the base of the head with the non-trigger hand bracing the slide). When WO#3 drew his firearm and pointed it towards the Subject, he reported that it may have struck the Subject’s head. Less than one second after WO#3 said “he’s reaching for it,” the Subject began to turn his head and said: “Nope, not reaching.” Virtually immediately thereafter, NE#1 fired his weapon at the Subject’s head, striking him.



Approximately 22 seconds elapsed from when the struggle began on the ground until when NE#1 fired the shot. Moreover, a video analysis conducted by an expert retained by FIT indicated that the time from when the Subject began saying “nope, not reaching” to the instant that the shot was fired was less than one second – exactly 0.64 seconds.

C. Aftermath of the Shooting

After the shot was fired, the Subject slumped down to the ground and was motionless. WO#2 moved the handgun from next to the Subject’s body to an area behind the Subject. She was then told by other officers to leave it there. The Subject was placed into handcuffs and his pockets were searched. A pill bottle fell out of his right pants pocket. The officers started administering emergency first aid to the Subject, including applying a pressure dressing to his head. EMTs arrived soon thereafter and also attempted to medically treat the Subject; however, he was declared deceased at the scene from the gunshot wound to his head.

SPD personnel secured the scene and multiple units began responding. The involved officers were separated from each other and public safety statements were taken from them by a supervisor. The tasks performed and actions taken by all of the involved and responding officers were recorded on BWV and ICV until FIT personnel arrived. After OPA personnel responded to the scene, FIT gave the officers permission to shut down all Department recording devices. The Crime Scene Investigation Unit (CSI) arrived and began to process the scene. The King County Medical Examiner (KCME) also came to the scene and transported the Subject to the King County Morgue.

D. FIT Investigation

Once FIT arrived on scene, they took custody of the investigation. FIT directed several of the officers to perform walkthroughs of the scene. During those walkthroughs, the participating officers placed placards of where they and the other involved parties were situated at the time of the shooting.

1. FIT Interviews

As part of its investigation, FIT interviewed the passenger and another civilian witness who were believed to have witnessed or potentially witnessed the shooting. All of the officers except for NE#1 were interviewed by FIT the night of the shooting. NE#1 had been given medical treatment, including the provision of painkillers. As such, NE#1’s assigned Guild attorney advised him not to participate in an interview. NE#1 was interviewed by FIT the following morning, again over the attorney’s objection.

a. *Civilian Witnesses*

FIT interviewed the passenger in the Subject’s car. She stated that the Subject was driving her to work when they were stopped by the police. She observed the Subject flee from the car and get chased by officers. She did not witness the shooting.



The other civilian witness stated that he was driving by the scene when he observed the Subject running and an officer tackling the Subject. He stated that the officers were trying to place the Subject under arrest, but the Subject was “fighting [them] off.” He said that the struggle continued, and an officer yelled: “Taser, Taser.” He recounted that a shot was fired seconds later. He did not hear the officers issue any commands other than the Taser announcement. He further did not observe the Subject with a handgun. Once the shot was fired, he drove away from the scene.

b. WO#1’s FIT Interviews

WO#1 described the basis for the stop and recounted what occurred during his interaction with the Subject. WO#1 recalled that the Subject seemed nervous and moved his hand several times towards the gear shifter. WO#1 stated that, in his experience, this was consistent with someone who was looking for a way out of the situation and who might flee. He stated that, while he and NE#1 were in their patrol vehicle, the Subject ran away from his car in a “full sprint.” WO#1 told FIT that the Subject ran in an unusual manner, in that his left arm was swinging as he ran but his right arm was bent at an angle and remained static. WO#1 stated that he believed that the Subject’s right hand was inside of his sweatshirt pocket and said that he had a “major concern” that the Subject was reaching for a gun. He indicated that, due to this concern, he yelled for the subject to stop reaching. He observed NE#1 tackle the Subject to the ground and saw the Subject on his hands and knees. WO#1 heard someone yell “gun” and he saw a gun on the ground near the Subject’s right foot. WO#1 reported that, at this time, he struck the Subject mid-back at least once with a closed fist. WO#1 recounted that the Subject reached for the gun with his right hand and that, at this time, he yelled that the Subject was reaching for the gun. He then heard a gunshot and the Subject fell to the ground. WO#1 asserted to FIT his belief that the Subject was trying to and would have shot them but for the force used by NE#1.

c. WO#2’s FIT Interviews

WO#2 described that she was standing by NE#1’s and WO#1’s patrol vehicle when she saw movement from the Subject’s car and observed the Subject flee across the street. She pursued the Subject and went over radio to say that the officers were in a foot pursuit. She saw the Subject go down to the ground and heard another officer yell “gun.” At that time, the Subject was on his hands and knees. She reported seeing the gun on the ground and said that she tried to step on it. She realized that the Subject’s left arm was not controlled, and she yelled for someone to grab the arm. When she did so, she determined that her holster was adjacent to the Subject’s arm and she was concerned that he could grab her firearm. She recalled that she fell to the ground and, when she got up, she did not know where exactly she was situated. She then heard one shot fired. She went over the radio and said, “shots fired.” She recounted that she took a step back, drew her firearm, and pointed it towards the Subject. At that time, she realized that the Subject was slumped on the ground and officers were placing him into handcuffs. She holstered her firearm. WO#2 stated that she then saw the handgun on the ground and picked it up and moved it away from the Subject. She mentioned to other officers that she was going to move the handgun further away, but she was told to leave it there. She did so and did not further touch the gun.



d. WO#3's FIT Interviews

WO#3 arrived at the scene with WO#2 in response to the requests for a backing unit. He recalled seeing the Subject run away from the car and across the street. WO#3 stated that, while the Subject was running away, he saw the Subject: "reaching towards his waistline as he's running and trying to hold something." Based on this, WO#3 believed that the Subject was "armed and dangerous." WO#3 saw NE#1 take the Subject down to the ground and observed the Subject on his hands and knees. WO#3 recounted that WO#1 was trying to control the Subject's right arm. WO#3 heard other officers say that there was a gun. WO#3 recalled moving towards the front of the Subject and he saw a gun on the ground that was close to the Subject's right hand. He tried to step on the gun. WO#3 drew his firearm and pointed it towards the Subject's head in preparation for taking a contact shot. WO#3 disclosed that he may have struck the Subject with his firearm when he initially drew it from his holster and moved it towards the Subject's head. WO#3 provided the following reasoning for why he believed deadly force to be justified at the time: "at that point, I saw the gun, there was a gun presented, the person...continuously kept reaching for the gun, [and] it didn't look like he wanted to go into handcuffs." WO#3 stated that, prior to preparing to fire the shot, he did not hear the Subject say anything to the officers.

WO#3 told FIT that, at the instant he was about to fire his firearm, he heard a shot. He recalled being confused because he did not believe that he had fired. He described that his firearm went out of battery when he pushed it against the Subject's head (a firearm goes out of battery when the muzzle of the firearm makes contact with a fixed object and that object displaces the slide from its normal position thus causing the firearm to not fire). When WO#3 realized that another officer had shot the Subject, WO#3 placed the Subject in the recovery position and assisted in providing emergency medical treatment.

WO#3 was interviewed a little over a week later. He further explained that, at the moment he first saw the gun, the Subject was continuing to try to access it with his right hand. WO#3 stated that it appeared to him to be within inches of the Subject's hand. WO#3 explained that, while he continued to try to step on the gun, he did not know whether he was going to be able to move it out of reach of the Subject. Based on this, the Subject's actions convinced him that a contact shot was necessary, and he drew his firearm. WO#3 explained that he had been trained by the Department on contact shots and when they should be used. WO#3 believed that this was a situation in which a contact shot was appropriate.

e. WO#4's FIT Interviews

WO#4 stated that he and WO#5 responded to the scene of the traffic stop as a backing unit for NE#1 and WO#1. WO#4 stood on the passenger side of the patrol vehicle. He had a view of the Subject and he described that the Subject kept looking towards the officers. WO#4 stated that, at this time, the Subject "popped" his head out of the car and looked back at the officers. WO#4 ordered him to "get back into the car." WO#4 stated that the Subject then ran from the car. WO#4 recalled that, as the Subject ran away, he appeared to be holding his hand near his waistband. WO#4 next observed the Subject on the ground with officers around. WO#4 described the Subject as being on his knees with his arms tucked underneath him and situated by his chest or waist. WO#4 positioned himself at the rear of the Subject. WO#4 heard officers yelling for the Subject to stop reaching for a gun and WO#4 perceived that the Subject: "appeared to be reaching either for his waist or tucking his arms underneath his chest." Shortly after he arrived to where the Subject and the officers were located and assessed the scene, WO#4 withdrew his Taser and issued a Taser warning (he stated "Taser, Taser"). However, WO#4 told FIT that he quickly reconsidered the use of the Taser.



He explained that he was concerned that, if he tased the Subject when the Subject had his hand on the gun, it could cause the Subject to tense up and involuntarily fire a round. WO#4 stated that he repositioned himself and he heard officers yelling: “don’t grab the gun” and “he’s reaching.” He then heard a single gunshot. He stepped backwards and observed officers applying handcuffs to the Subject. WO#4 told FIT that he did not see the gun prior to the shot being fired. He did, however, see the gun on the ground when he assisted in providing medical treatment to the Subject. WO#4 did not use any force on the Subject.

f. WO#5’s FIT Interviews

WO#5 said that he and WO#4 arrived together at the scene of the traffic stop. He stated that he saw the Subject flee from the car. WO#5 recalled unholstering his weapon; however, he did not point it at the Subject at that time. WO#5 heard officers saying multiple times that the Subject had a gun. WO#5 stated that he observed that the Subject was on his hands and knees and he placed himself at the Subject’s feet. WO#5 told FIT that he was trying to determine how to assist. He said that there were four other officers dealing with the Subject at that time. He stated that he looked down to the right and saw a “hand with a gun.” He recalled hearing officers tell the Subject to drop the gun or he would be shot. WO#5 explained that he tried to step on the Subject’s hand to prevent him from reaching the gun; however, he could not see where the hand was located given “what was going on down there.” While evaluating his force options, he observed that two other officers had their firearms drawn and pointed at the Subject’s head. WO#5 recounted that, shortly thereafter, he heard a single shot and the Subject went limp. WO#5 told FIT that he did not hear the Subject say anything prior to the shot being fired. He further confirmed that he did not make physical contact with the Subject.

g. NE#1’s FIT Interviews

NE#1 recounted the facts supporting the traffic stop of the Subject’s vehicle and the steps he took when he approached the vehicle and interacted with the passenger. NE#1 recalled that the Subject appeared to be nervous and displayed “odd behavior.” NE#1 specifically referenced the Subject’s movements towards the gear shifter, which NE#1 characterized as “very odd for a traffic stop.” NE#1 stated that, once the Subject fled from the vehicle, he pursued the Subject on foot. NE#1 said that he did so because the Subject had committed a crime and because NE#1 felt that the Subject might try to destroy evidence that could be in his possession (for example, discarding narcotics or a firearm). NE#1 told FIT that the extra backing units that were called to the scene and the verbal commands provided to the Subject prior to his flight were forms of de-escalation. However, NE#1 explained that, based on the Subject’s actions and his running from the car, further de-escalation was not safe or feasible.

NE#1 was able to catch up to the Subject and tackled him to the ground. NE#1 said that he heard a “thud” when the Subject went down to the ground. He recalled that the Subject was able to get up on all fours. NE#1 described struggling with the Subject. He placed himself in the vicinity of the Subject’s armpit area on the Subject’s left side. NE#1 said that, in this position, he saw a handgun on the ground and saw the Subject’s right hand on the handgun. NE#1 explained that the Subject continued to physically resist the officers, was non-compliant, and pulled his arms away from the officers. NE#1 stated that he perceived the Subject to be continuing to try to go for the handgun.



NE#1 said that he gave the Subject multiple directions and warnings. He recalled telling the Subject to stop, to stop reaching for the gun, and to stop trying to grab the gun. NE#1 told FIT that he also warned the Subject that he was going to get shot. NE#1 stated that, at this point, he drew his firearm, placed it against the Subject's head, and pulled the trigger. NE#1 explained that no shot was fired because the firearm went out of battery. NE#1 said that he put the gun back into battery and pulled the trigger, firing one shot. The shot struck the Subject by the left ear.

NE#1 stated that he shot the Subject because he believed that the Subject was actively trying to reach for a handgun. He believed that, if he did not use that level of force, the Subject would have taken control of the handgun and potentially shot him and/or other officers. NE#1 did not believe that he had any other viable alternatives to using deadly force.

2. Further Investigation

FIT was informed by the KCME that within the pill bottle that fell out of the Subject's pocket were 263 pills marked with "30 M." This was consistent with the markings for oxycodone. However, this was inconsistent with the prescription listed on the pill bottle, which was in the Subject's name and was for amoxicillin. Moreover, when the KCME tested the pills it was determined that they were counterfeit and were an acetaminophen and fentanyl mix. The KCME also located approximately \$1,600 in the Subject's possession.

FIT additionally determined that the handgun possessed by the Subject had been reported stolen from a vehicle on July 16, 2016 in Renton, Washington (see Renton Police Department Case Number 2016-00009365). CSI swabbed the handgun for latent prints and DNA. No latent prints were returned from the handgun; however, the Subject's DNA was "included as a possible contributor from the DNA swabs collected from the Subject's handgun and magazine recovered at [the] scene." (FIT Force Investigation Report, at p. 68.)

E. Criminal Review, Conclusion of the FIT Investigation, and Force Review Board Analysis

On January 2, 2019, OPA was informed by the FIT Captain of the "nope, not reaching" statement that the Subject made immediately before he was shot. Based on this new information, which OPA was not aware of on the night of the incident, OPA self-initiated an investigation on January 7, 2019. OPA further referred this matter back to SPD to complete a criminal review. Due to the newly passed Initiative 940 (which was effective as of December 6, 2019), OPA recommended that SPD request that an outside law enforcement agency perform that review. On January 10, 2019, SPD referred this matter to the Washington State Patrol (WSP).

WSP was provided with the documentation and video from the underlying incident. WSP was also provided with the interviews that FIT conducted of the employee and civilian witnesses. WSP was not given NE#1's FIT interview as it was protected from use in a criminal proceeding by *Garrity*.

WSP obtained toxicology reports for the Subject that were negative. WSP also determined that the Subject had an active federal warrant for violation of parole. However, this information was not known to the officers at the time and, as such, did not play into their decision-making.



WSP presented the findings of its investigation to SPD, WSP personnel, and the Chief Criminal Deputy for the King County Prosecuting Attorney's Office (KCPAO) on March 7, 2019. WSP conducted several additional investigatory steps and concluded its review on or around March 25, 2019. No criminal charges were filed by the KCPAO and this matter was returned to SPD.

FIT continued its parallel investigation during the pendency of the criminal investigation. For all intents and purposes, FIT concluded its investigation on March 25, 2019 and the case was transmitted by FIT to the Force Review Unit (FRU) on April 11, 2019. FRU reviewed the case and prepared for it to be presented before the Department's Force Review Board (FRB).

FRB reviewed this case on May 7, 2019. FRB did not issue a final determination on whether NE#1's actions were consistent with policy due to OPA's pending investigation. The FRB did, however, deliberate on the officers' tactics and decision-making. Of note, FRB considered the initial decision to engage in a foot pursuit of the Subject. FRB determined that this was a reasonable decision given that the Subject had committed a crime and because the officers believed that the Subject could potentially destroy evidence and, based on his manner of running, he was potentially armed. FRB also considered the use of other less-lethal force options during the force encounter. FRB concluded that the use of a Taser or OC Spray were not appropriate under the circumstances where the Subject was in possession of a handgun. The FRB noted that WO#1 considered using a neck restraint but was concerned about his positioning and on his lack of training in that tactic. FRB further evaluated WO#2's movement of the handgun after the shooting. FRB noted that WO#2 took this action "in a good faith effort to keep [the handgun] away from the subject and render the scene safe for both officers and responding SFD personnel." FRB noted that WO#2 may not have been aware that the Subject was deceased at the time she moved the handgun and that she marked the initial position of the handgun with a Department business card. Lastly, as the force used by WO#1 and WO#3 was not under OPA investigation, FRB evaluated whether it was consistent with policy. In finding that it was, FRB provided the following rationale:

The Board determined that the subject's actions were active resistance with a threat of harm. It appeared the subject's actions in attempting to grab his firearm and not complying with the officers' instructions were inconsistent with a subject trying to flee and escape; the subject presented a life safety threat to the officers and use of physical force to prevent him from gaining access to the handgun was necessary, reasonable and proportional.

After the conclusion of the FIT investigation, the transmittal of WSP's concluded review back to SPD, and the issuance of FRB's findings, OPA commenced its investigation.

F. OPA's Investigation

OPA reviewed all of the documentation generated by FIT, CSI, KCME, and WSP, including the various interviews that were conducted and reports created. OPA reviewed the BWV and ICV. OPA further reviewed the video analysis conducted by the expert retained by FIT. Lastly, OPA reviewed the training provided by SPD to NE#1 for dealing with an individual on the ground who possessed a weapon and presented a threat of serious injury or death to officers.



1. OPA Interviews

OPA also conducted interviews of NE#1, WO#3, and WO#4. After reviewing the FIT interviews of WO#1, WO#2, and WO#5, OPA did not believe it necessary to re-interview them during its investigation. Lastly, OPA interviewed a Sergeant from SPD's Training Unit concerning the guidance and instruction provided to officers concerning when contact shots are appropriate.

a. NE#1's OPA Interview

NE#1 told OPA that, prior to the Subject fleeing the car, NE#1 perceived him to be nervous. Specifically, NE#1 described that the Subject "reached for the gear shifter as if he was going to place it into drive or reverse and attempt to flee" and that the Subject appeared "apprehensive" when he gave the car keys to WO#1. NE#1 recalled discussing the Subject's furtive behavior with WO#1.

NE#1 said that he pursued the Subject when he ran from the car because the Subject was engaging in criminal activity at the time. NE#1 stated that he gave the Subject orders while pursuing him but did not recall the specifics of what he said. He also did not recall what other officers may have said during the foot pursuit. NE#1 said that he did not consider ceasing the pursuit at that time.

With regard to de-escalation, NE#1 stated that he and other officers gave the Subject verbal commands. He contended that, at the time the Subject ran from the car, no further de-escalation was safe or feasible.

NE#1 recounted that, after he tackled the Subject, he heard a metallic object hit the ground. Shortly thereafter, he observed a black and silver handgun in the immediate vicinity of the Subject. At that time, he described the Subject as being on his hands and knees. NE#1 was standing by the Subject's left armpit area and was making physical contact with the Subject. He stated that he was holding onto something on the Subject's back, potentially his clothing. NE#1 indicated that his legs were making contact with the left side of the Subject's body. NE#1 explained that, during the ongoing struggle, he could see the Subject's hands and he observed the Subject's right hand on the handgun.

NE#1 heard WO#1 give directions to the Subject (saying either "drop the gun" or "drop the gun or you're going to get shot"). NE#1 told the Subject to "drop the fucking gun" and said, "you're going to get fucking shot dude." NE#1 also heard WO#1 say "he's reaching" right before NE#1 fired the shot.

NE#1 said that, at this time, the Subject was fighting with officers. NE#1 described that the Subject was throwing NE#1 back with his right arm, that he was pushing NE#1's whole body, that the Subject was "attempting to escape the officers' grasps," and that he believed that the Subject was actively trying to kill or seriously injure the officers. NE#1 told OPA that he positioned his firearm for a contact shot and pulled the trigger but that no shot was fired. When asked why he made the decision to use deadly force at that time, NE#1 said: "The Suspect...was acting and threatening to cause death or serious physical injury to myself and the other officers involved." NE#1 determined that his firearm was out of battery. He put his firearm back into battery and saw the Subject shifting to his right as if to access the firearm. NE#1 again pulled the trigger, this time shooting the Subject by his left ear. NE#1 told OPA that this second decision to use deadly force was again based on his belief that the Subject was actively trying to gain possession of the handgun and that the Subject posed an imminent risk of serious injury or death to himself and the other involved officers. NE#1 did not believe that there were any reasonable alternatives to using deadly force at the time.



At the time he pulled the trigger, NE#1 heard WO#1 say: “he’s reaching.” NE#1 said that he did not hear the Subject say: “nope, not reaching.” NE#1 said that he also did not hear any officer reference the use of a Taser.

NE#1 recounted that he had been trained on the use of contact shots in the police academy and during the post-Basic Law Enforcement Academy (post-BLEA) administered by SPD. He also received in-service training on contact shots from SPD. Specifically, NE#1 took the Department’s 2018 Phase Three Defensive Tactics training. NE#1 recognized that this training provided for three possible options when responding to a potential deadly assault from a person on the ground: (1) striking the person in the neck or throat; (2) disengaging, arcing away, and then using deadly force; or (3) a brace contact shot. NE#1 said that the first two options were not feasible given that the Subject had a handgun in his immediate vicinity that he was reaching for and because, in NE#1’s calculation, the Subject posed an imminent threat of serious injury or death to the officers. In response to OPA’s questions, NE#1 said that he had not received academy, Post-BLEA, or in-service SPD training on neck or carotid restraints.

b. WO#3’s OPA Interview

OPA’s interview of WO#3 focused on his independent decision to attempt to fire his firearm at the Subject prior to it going out of battery.

WO#3 told OPA that he had been trained on the use of a contact shot by SPD. He described a contact shot as wrapping the non-trigger hand around the barrel of the firearm and placing the firearm as close as possible to the body of the individual at issue. He explained that the purpose of the contact shot was to fire once to immobilize the individual and to eliminate the threat posed.

In describing when and why he decided that deadly force was appropriate, WO#3 stated that he heard NE#1 and WO#1 reference a handgun and indicated that he saw the handgun near the Subject’s right hand. WO#3 told OPA that the officers who were immediately surrounding the Subject were struggling to get him into custody and that the Subject was continuing to reach for the handgun. WO#3 believed that there was an imminent risk to his and other officers’ safety. In this regard, he provided the following explanation: “I honestly thought I was going to get shot or my partners were going to get shot.”

WO#3 stated that he did not ultimately pull the trigger of his firearm. He heard a slide “go back” and he believed that it was his slide and that his firearm was out of battery. He recalled thinking that he needed to regrip and reposition his firearm to take the contact shot; however, at that moment, he heard a shot. WO#3 told OPA that he initially believed that the Subject had gotten hold of the handgun and fired the shot. He then saw NE#1 “walking off upset,” and realized that NE#1 had fired. WO#3 stated that he did not hear the Subject say “nope, not reaching” prior to the shot being fired.

c. WO#4’s OPA Interview

OPA questioned WO#4 concerning his initial decision to withdraw his Taser and issue a Taser warning. WO#4 stated that, at the time he did so, he was standing by the Subject’s legs. He said that the Subject was facing away from him and was lying forward on the ground. WO#4 did not see a handgun at the time; however, he later heard officers reference the handgun and give commands to the Subject to not reach for it.



WO#4 stated that, for a split-second, he believed that he could use his Taser. However, as soon as he heard reference to a handgun, he disregarded the Taser as a viable force option. He did not think the use of a Taser would have been reasonable at the time given that the Subject was armed. He specifically referenced his concern that, had he Tased the Subject and had the Subject been gripping the handgun at the time, the Taser application could have caused the Subject's body to tense up and could have resulted in an involuntary discharge of the handgun. WO#4 explained that there were officers surrounding the Subject at the time. WO#4 also stated that he would not have used the Taser in probe mode. He told OPA that he was not in a good position and did not have an appropriate target.

d. Training Sergeant's OPA Interview

The Training Sergeant told OPA that he had previously supervised the defensive tactics training program for SPD and was a master use of force instructor. The Training Sergeant stated that he was familiar with the facts of this case and that, prior to his interview, he reviewed officer statements, the BWV, and portions of the FIT investigation file. He stated that he was familiar with the SPD training provided to officers concerning dealing with an individual armed with a handgun while on the ground.

The Training Sergeant told OPA that officers were taught to use a brace contact shot with an individual who was grounded but who possessed a handgun. He described that the module used for this training referenced an individual on his hands and knees who had a handgun in his hand. He indicated that this training was provided in post-BLEA and during annual in-service SPD defensive tactics training. The Training Sergeant explained what brace contact meant and also what it meant when a firearm went out of battery. The Training Sergeant told OPA that the purpose of the brace contact shot and, specifically, the reason officers are trained to aim directly at the head, is to ensure that the threat of death or serious physical harm presented by the individual is completely eliminated.

The Training Sergeant told OPA that the Department did not train officers on how to use a neck or carotid restraint. The Training Sergeant further told OPA that the Department does not currently train officers to use low-level force or less-lethal force options – such as a Taser or OC Spray – in a situation where a grounded individual possesses a handgun. The Training Sergeant stated that a Taser would not have been a primary force option in such a scenario and that, to the contrary, officers were trained to holster their Tasers and draw their firearms where deadly force was warranted.

The Training Sergeant opined that NE#1's actions during this incident were consistent with the training he was provided by SPD. The Training Sergeant provided the following reasoning:

The—this is one of the rare cases in the sense where—you mean the—the—the diagrams and the pictures, the explanation of the setting and the training is almost, other than being fully prone out versus being on all fours being the probably the one difference, is—it is fairly textbook of what the situation was trained and what the situ—a—what—what the response was by [NE#1]...

Lastly, the Training Sergeant stated that it was possible that a person could say that they were complying with officer direction or that they were not engaging in dangerous behavior but that this would not necessarily accurately convey their intent or capabilities. Ultimately, the Training Sergeant opined that an officer was required to not only evaluate what an individual said, but also whether the individual's actions were consistent with those statements.



2. Conclusion of OPA's Investigation

At the conclusion of OPA's investigation, the finalized casefile was reviewed and approved by a civilian OPA supervisor. It was then transmitted to the Office of Inspector General for Public Safety (OIG). Pursuant to City ordinance, the OIG reviewed the completed OPA investigation and, on July 30, 2019, certified the investigation as thorough, objective, and timely. The case then proceeded to the issuance of recommended findings by OPA, which are set forth herein.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (See id.) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (Id.) Lastly, force must be proportional to the threat faced by officers. SPD Policy instructs that: "The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it." (Id.)

A. Was the Force Used Consistent with SPD Policy?

As discussed above, SPD Policy requires force to be reasonable, necessary, and proportional. These three factors and my conclusions as to each are outlined below.

1. Reasonableness Factor

As discussed above, the reasonableness determination is based on an evaluation of a number of factors that are set forth in the policy. In assessing these factors, OPA applies, as required, a reasonable officer standard. This means that OPA considers what a reasonable officer with similar training, education, and experience would have done if confronted with the same facts and circumstances as NE#1 and whether NE#1's actions were consistent with this. In addition, SPD policy and caselaw prohibit OPA from applying 20/20 hindsight. This means that OPA cannot look at evidence that was unknown to the officers or that would not have been considered by a reasonable officer and use that to second guess the actions that NE#1 took.

a. Severity of the Offense

The Subject was initially stopped for a suspected traffic violation. Based on the Subject's demeanor during the stop and, specifically, his nervousness and perceived movements towards the gear shifter, the officers expressed concern that he could be preparing to flee. WO#2 speculated that the Subject could have an open warrant. While this was ultimately proven to be true, the officers did not know this at the time.



Once the Subject ran from the scene, the officers had probable cause to arrest him for another crime – obstruction. Moreover, as NE#1 indicated, during the pursuit, he believed that the Subject could be planning to destroy evidence of criminality. Lastly, once the Subject was on the ground and the officers observed the handgun, the officers believed that he was potentially attempting to assault them with a deadly weapon. Accordingly, even though the initial crimes at issue were not severe, the potential offenses grew more serious as the incident unfolded. As such, this factor weighs in favor of a determination of reasonableness.

b. *The Level of Threat or Resistance*

At the time deadly force was used by NE#1, he reasonably believed that the Subject posed a high level of threat and resistance to himself and other officers. Immediately prior to using force, NE#1 perceived the Subject to be nervous and to be potentially preparing to flee and then viewed the Subject, in fact, flee. While NE#1 did not report observing motions that suggested that the Subject was armed during the foot pursuit, other officers did and those officers verbally expressed their concern that the Subject had a handgun. As such, NE#1 was aware, prior to tackling the Subject to the ground, that it was possible, if not likely, that the Subject was armed. At the moment that NE#1 tackled the Subject down, he heard a metallic sound of something striking the ground. He later concluded that this was the sound of the handgun falling to the ground and this was confirmed by the fact that, shortly thereafter, he saw a handgun in the immediate vicinity of the Subject. NE#1 reported that, during the time that he physically struggled with the Subject, the Subject continued to resist and was non-compliant. This is supported by the BWV. The BWV reflects that the Subject remained on his hands and knees while multiple officers, including NE#1, were actively trying to subdue him. Notably, during this time, the Subject could have entirely ceased physical resistance and could have laid flat on the ground and stopped moving. While the Subject's reason for this is unknown, he did not do so. Indeed, to the contrary, he continued to engage in movements that could have demonstrated to a reasonable officer that the Subject was continuing to try to possess and ultimately use the handgun. Indeed, the BWV captured that, at one point, the Subject did, in fact, have the handgun in his right hand. Moreover, aside from his statement in the split-second prior to being shot, the Subject said nothing during his struggle with the officers, including nothing suggesting that he was surrendering. Although the Subject did say, right before he was shot, "nope, not reaching," all of the officers stated that they did not hear the statement. The BWV further suggested that, in the seconds prior to the making of this statement, the Subject was still moving his hands on the ground in the vicinity of the handgun.

As such, this factor also weighs in support of the reasonableness of the force.

c. *Potential Threat to the Community*

There were a number of civilians in the immediate area of the shooting. For example, there were patrons inside of the restaurant directly adjacent to where the shooting occurred. There were also civilians employed at the convenience store across the street, and the passenger was still within the immediate vicinity of the vehicle. Moreover, there were numerous vehicles traveling in the vicinity of the shooting as it was early on New Year's Eve. Lastly, the Subject's fleeing, continued resistance, and lack of surrender while either grasping or having immediate access to a handgun represented a serious threat to surrounding community members.

For these reasons, there was a high potential risk to the community from a fleeing, armed individual and this factor weighs in favor of a finding that the force was reasonable.



d. *Potential of Injury to Bystanders and Officers*

As explained above, there was a significant potential of injury to bystanders and officers during this incident. As such, this fact also weighs in favor of a finding of reasonableness.

e. *The Risk or Apparent Attempt by the Subject to Escape*

The Subject indisputably attempted to escape during this incident. Moreover, once he was tackled to the ground, he continued to struggle with the officers. Given that the Subject was fatally shot, his intent and whether he was trying to actively resist and harm the officers cannot be known. However, as discussed above, a reasonable officer in NE#1's place could have believed that, based on the Subject's continued physical activity, his failure to cease all actions and lie prone on the ground, his immediate access to a handgun, and his lack of any initial statements indicating his willingness or intention to surrender, that the Subject was still attempting to escape and could cause violence to officers if he was prevented from doing so.

At the time of this incident, the officers were aware that the Subject was armed and believed it likely that he had an active warrant. This supported the officers' belief that the Subject had a motive to flee and to continue to resist in order to avoid capture and arrest. However, the officers were not aware that the Subject did, in fact, have an active parole violation warrant and that the Subject was in possession of a large quantity of illegal narcotics. Given the nature of that federal warrant, which was drug-related, and the fact that he had a gun and drugs on his person, had the Subject been taken into custody, he almost certainly would have been sentenced to a significant prison term to be served in a federal penitentiary, likely outside of Washington. Again, while unknown to officers, when evaluating this incident after the fact, this information provides some possible insight into the Subject's possible intent and subjective mindset at the time.

For the above reasons, this factor weighs in favor of a finding of reasonableness.

f. *The Conduct of the Subject*

As described herein, at the time deadly force was used, the Subject had fled, was continuing to be non-compliant, and was physically resisting officers. Moreover, the Subject took no actions and made no statements – except that uttered in the instant before he was shot – that indicated any intention on his part to surrender. Further, as discussed above, the Subject was, at points, armed or had immediate access to a handgun, and a reasonable officer in NE#1's place could have believed that the Subject's movements were consistent with trying to grab and potentially use the handgun. As such, this factor supports a finding that the force was reasonable.

g. *The Time Available to the Officer to Make a Decision*

From OPA's analysis of the video, approximately 22 seconds elapsed from when the Subject was tackled to the ground until when NE#1 used deadly force. During this time, the Subject continued to prevent the officers from taking him into custody, and he did not cease his physical resistance. Moreover, throughout virtually the entirety of the 22-second struggle, the Subject either held or had immediate access to the handgun, and the officers gave the Subject multiple orders to stop reaching and told him that if he continued to do so he would be shot.



Given this, NE#1 had a very short timeframe in which to make the decision to use deadly force. As such, I find that this factor weighs in favor of reasonableness.

h. *The Availability of Other Resources*

At the time of the shooting, there were several other officers trying to subdue the Subject. Two of these officers (WO#1 and WO#3) used non-deadly force during the struggle but were unsuccessful in gaining the Subject's compliance. A third officer, WO#4, evaluated using a Taser but, once he determined that the Subject was armed, he virtually immediately decided that this was not a viable force option. Moreover, the BWV confirmed that multiple officers tried to trap the handgun with their feet or to kick the handgun away. However, given the fluid nature of this incident and the positioning of the officers and the Subject, this was not possible at the time.

Given the facts and circumstances of this case, it was a deadly force scenario. As such, and based on the current training received by officers, there were only two other possible alternatives that NE#1 could have used other than a contact shot. As discussed by NE#1, these two options – a neck strike and stepping back to get into a firing position – were not appropriate here given the Subject's immediate access to the handgun. The Training Sergeant agreed with NE#1's conclusion and said that it was in-line with the training NE#1 received.

Even if it was possible that there were other force options that NE#1 could have evaluated, a reasonable officer in his place, with the same experience and training, was warranted in believing that a contact shot was the only feasible action that could be taken. As such, this factor weighs in favor of reasonableness.

i. *The Training and Experience of the Officer*

NE#1 has been employed by the Department since September of 2015. Since that time, NE#1 worked in patrol. He received post-BLEA training in, among other topics, use of force, crisis intervention, de-escalation, and deadly force. After finishing post-BLEA, NE#1 received significant ongoing training, including in-service training in: firearms and defensive tactics; active threat and de-escalation; small team tactics; and over 40 hours of crisis intervention.

As discussed more fully below, in 2018, NE#1 received training concerning the application of deadly force to an armed individual struggling with officers while on the ground. That training provided NE#1 with three options available to him during that situation, including a contact shot. The training further provided guidance on when officers were expected to use contact shots. NE#1's actions during this incident were consistent with that training and with his experience as a police officer. As such, this factor weighs in favor of a finding of reasonableness.

j. *The Subject's Proximity to or Access to Weapons*

During the pendency of the struggle on the ground, the Subject either possessed a handgun or had one in his immediate vicinity. This was known by NE#1 and the remainder of the involved officers. As such, this fact supports a finding that the force was reasonable.



k. Officer Versus Subject Factors

At the time deadly force was used, the Subject was struggling against several officers. The Subject was physically larger than any of the officers but there were multiple officers concertedly trying to control his person. Notably, even though several officers concertedly were trying to take the Subject into custody and to prevent him from accessing his handgun, they were largely unable to do so, and the Subject continued to make movements consistent with trying to locate the handgun on the ground. Under the specific circumstances of this case, the fact that there were multiple officers engaging with the Subject at the same time does not yield a conclusion that the force was unreasonable. OPA views this factor as neutral.

While none of the above factors are by themselves determinative, the factors virtually unanimously weigh in favor of finding that the force used by NE#1 was reasonable.

2. Necessity Factor

During his OPA and FIT interviews, NE#1 asserted his belief that deadly force was necessary under the circumstances that faced him. NE#1 explained that: "The Suspect...was acting and threatening to cause death or serious physical injury to myself and the other officers involved." NE#1 asserted that he observed a handgun within grasp of the Subject and heard multiple officers tell the Subject to drop the handgun and state that the Subject was reaching for it. However, even though officers were trying to control the Subject and were giving him clear commands to not reach for the handgun, the Subject continued to make motions that NE#1 reasonably believed were attempts to grip and potentially use the firearm.

In addition, that the Subject said "nope, not reaching" in the instant before he was shot does not undermine the necessity of the force. It is important to consider that all of this happened in the span of 22 seconds. During virtually the entirety of that time, the Subject either possessed or could have immediately controlled the handgun, was non-compliant, and provided physical resistance. Multiple officers were yelling at the Subject to drop the gun, were trying to subdue the Subject, and were endeavoring to control the handgun, which made the scene chaotic even the officers' orders were non-contradictory and clear. Notably, prior to the 0.64 seconds before the shot was fired, the Subject gave no indication that he had ceased posing an imminent threat. Even presupposing that NE#1 had heard the "nope, not reaching" statement, which he and other officers denied, OPA concludes that it would have been virtually impossible for NE#1 to have been able to change his perception that the Subject presented a threat and to make an independent decision to diametrically shift his approach to the situation and not fire. This is particularly the case when every other indicator during the pendency of this incident had been suggesting to him the opposite conclusion.

Given this and based on the information available to him during the immediacy of the incident, NE#1's use of deadly force was necessary under the circumstances. Moreover, and discussed more fully herein, there was no other force that would have been a reasonable alternative to the use of deadly force and that was also consistent with the training received by NE#1.



3. Proportionality Factor

Lastly, with regard to the proportionality of the force, NE#1 reasonably believed that the Subject posed an imminent threat to his and other officers' lives and safety. For this reason, NE#1 was able to use a high level of force to prevent this harm from occurring. NE#1's use of deadly force was thus permissible under the circumstances.

B. Were NE#1's Actions In-Line with Department Training?

SPD training instructs officers on a situation virtually identical to that which occurred during this incident. As part of the training in question, which NE#1 attended in 2018, officers were taught how to respond to a situation where a turtled individual or an individual on the ground has access to a handgun. Images associated with the training show a grounded individual with a handgun and two officers surrounding him. One officer is shown attempting to control the individual's hands and to prevent the individual from being readily able to shoot while the other officer is taught to place his firearm against the individual's head to prepare to fire a contact shot. Officers are not trained to use low-level force or less-lethal options (such as a Taser) during this type of situation.

The training does provide for two other options in such a scenario – striking the person in the neck or throat or disengaging, arcing away, and then preparing to use force. However, the Training Sergeant explained that these other two options would not have been feasible under the circumstances presented by this incident. Ultimately, the Training Sergeant concluded that NE#1 acted consistent with this training when he used a contact shot.

Based on OPA's review of the training materials and review of the Training Sergeant's testimony, OPA concurs that NE#1 acted consistent with the training he received during this incident when he used a contact shot. OPA also notes that, while NE#1 received theoretical training in this area, that training did not include the firing of live rounds or even the use of an actual firearm. Moreover, while NE#1 was trained on how his firearm could go out of battery and how to put the firearm back into battery, he was not trained to do so under the immediacy of a deadly force situation. The uncertainty and fluidity of the situation was even more reason for why it was reasonable for NE#1 to strictly adhere to his training and to use a control shot.

C. Conclusion

In reaching this finding, OPA recognizes that the Subject's death was a tragedy for all involved. The Subject left behind family, friends, and a community who loved him. For his part, NE#1 was placed in a situation where no officer wants to be – taking the life of another human being. Ultimately, OPA's findings are governed by the law and by SPD policies. Based on a totality of the evidence and when applying these standards, OPA believes that NE#1 acted consistent with policy and his training during this incident. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #1 - Allegation #2

8.200 - Using Force 4. Use of Deadly Force

SPD Policy 8.200-POL-4 governs the use of deadly force by SPD employees. It states that: "Deadly force may only be used in circumstances where threat of deadly or serious physical injury to the officer or others is imminent." The policy defines an imminent danger as when an objectively reasonable officers believes that: (1) "A suspect is acting or threatening to cause death or serious physical injury to the officer or others"; (2) "The suspect has the means or instrumentalities to do so"; and (3) "The suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury." (SPD Policy 8.200-POL-4.)

As discussed above, OPA finds that the force used by NE#1 – the single shot that struck and killed the Subject – was consistent with policy. For these same reasons, OPA concludes that NE#1's use of deadly force was appropriate under the circumstances of this case. Specifically, OPA determines that NE#1 reasonably believed that: (1) the Subject's holding of a handgun and movements consistent with trying to relocate and grasp the handgun were actions that threatened to cause serious injury or death to officers; (2) given his immediate access to the handgun, the Subject had the means to cause serious injury or death to officers; and, (3) the handgun was directly under the Subject and within his grasp and, as such, he had the opportunity and instrumentality to cause serious injury or death to officers.

In evaluating this case, OPA considered whether the outcome would have been different had the involved officers been trained in neck or carotid restraints. Notably, WO#1 stated that he thought about using this tactic, but that he was concerned with his positioning and the lack of training he had received. Indeed, as the Training Sergeant explained, SPD does not currently train (and has not recently trained) the use of a neck or carotid restraint. OPA also notes that the tactic would have been risky in this case as an officer attempting to use a neck or carotid restraint could be in the direct line of fire or block a contact shot were it to become immediately necessary. Given these issues, even had the involved officers been fully trained in neck or carotid restraints, OPA finds that the use of this tactic would not have been a viable force option during this incident and, thus, that it would not have changed the outcome of this case.

The above being said, and even if this case would not have been altered, OPA believes that the Department should consider training neck or carotid restraints as the use of that tactic could be determinative in a future scenario. As such, OPA issues a Management Action Recommendation to that end. OPA specifically recommends that the Department provide the following instruction: how to properly apply the neck or carotid hold; the physiological results and risk of the tactic; and when the tactic is appropriate, with specific emphasis on the fact that it should only be used where deadly force would be justified.

Recommended Finding: **Not Sustained (Management Action)**



Named Employee #1 - Allegation #3

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL-1.)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (*Id.*) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

This allegation was classified for investigation to evaluate whether NE#1 properly de-escalated prior to using force. When NE#1 initially participated in the traffic stop of the Subject, both he and WO#1 gave the Subject clear and non-conflicting verbal commands to not reach for the gear shifter, to turn off the car and provide the keys to WO#1, and to stay inside of the car. Moreover, the officers called for backing units to provide additional support to slow down the incident and to make it more likely that force would not need to be used during the traffic stop. At the time that the Subject ran from the car, the officers pursued him and directed him to stop and, after perceiving that he might have a gun, told him that, if he did not comply, he could be shot.



When the Subject made the decision to flee the car, the officers were justified in chasing him. As the officers referenced in their interviews, the Subject had committed criminal offenses and individual officers were worried that, based on how he was running and the positioning of his hand, the Subject could be armed and could possibly harm officers or community members (WO#1, WO#3, and WO#4) or that he could destroy evidence if allowed to flee and escape (NE#1). Based on the officers' reasonable concerns at the time, de-escalation was no longer safe or feasible.

After NE#1 tackled the Subject to the ground, he and other officers gave the Subject multiple lawful orders – again clear and non-conflicting – to stop struggling with them and to stop reaching for the handgun. However, the Subject did not comply with these orders. Further, virtually all of the officers (except WO#4) reported seeing a handgun on the ground and recounted that the handgun was either being gripped by the Subject or was within the Subject's immediate reach. Given this and when the Subject continued to move his hands consistent with reaching for the handgun, the officers were faced with a deadly force scenario, and no further de-escalation was safe or feasible.

Based on the above, I find that the officers attempted to de-escalate this matter prior to using force and, when they pursued the Subject on foot and then made the decision to use force, no further de-escalation was safe or feasible. Moreover, further de-escalation at those times could have placed the officers and other community members at significant risk of harm and would have significantly compromised legitimate law enforcement priorities. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**